United Nations A/CONF.210/2006/15

General Assembly

Distr.: General
5 July 2006

Original: English

Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
New York, 22-26 May 2006

Report of the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Prepared by the President of the Conference

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I. Introduction

1. Pursuant to article 36 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,[1] and in accordance with paragraph 16 of General Assembly resolution 59/25, the Secretary-General convened a review conference on the Agreement four years after its entry into force. The Review Conference was held in New York from 22 to 26 May 2006.

2. The Review Conference was mandated to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of those stocks (article 36, paras. 1 and 2).

3. Pursuant to paragraph 6 of General Assembly resolution 56/13, States parties to the Agreement have held, since 2002, annual informal consultations for the purposes, inter alia, of considering the regional, subregional and global implementation of the Agreement, making any appropriate recommendations to the General Assembly on the scope and content of the annual report of the Secretary-General relating to the Agreement, and preparing for the Review Conference.

4. Pursuant to paragraph 23 of General Assembly resolution 60/31, the fifth round of informal consultations of States parties to the Agreement, held in New York from 20 to 24 March 2006, served as the preparatory meeting for the Review Conference. The preparatory meeting addressed procedural and organizational matters as well as substantive issues related to the Review Conference, including (a) consideration of a report prepared by the Secretariat in cooperation with the Food and Agriculture Organization of the United Nations (FAO), in accordance with paragraph 17 of General Assembly resolution 59/25, to assist the Review Conference in the implementation of its mandate under paragraph 2 of article 36 of the Agreement (A/CONF.210/2006/1); and (b) the preparation of recommendations to the Review Conference on the provisional agenda (A/CONF.210/2006/3), organization of work (A/CONF.210/2006/4), provisional rules of procedure (A/CONF.210/2006/6) and elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). The report prepared by the Secretariat contained detailed information from parties on measures taken to implement the Agreement, from non-parties on measures adopted that reflect the principles in the Agreement, and from regional fisheries management organizations on how relevant provisions of the Agreement have been incorporated into conservation and management measures.

5. In accordance with article 36 of the Agreement, the Secretary-General addressed invitations to participate in the Review Conference to all States parties to the Agreement and those States and entities which are entitled to become parties, as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

[1] United Nations, *Treaty Series*, vol. 2167, No. 37924.

II. Procedural matters

A. Opening of the Review Conference

6. The Director of the Division for Ocean Affairs and the Law of the Sea, Vladimir Golitsyn, opened the Review Conference on behalf of the Secretary-General.

B. Election of the President

7. The Conference elected David Balton, Deputy Assistant Secretary of State for Oceans and Fisheries, United States of America, as President of the Conference by acclamation.

C. Opening statements

8. In his opening statement, the President noted that the Conference was not taking place in isolation, and highlighted developments since the entry into force of the Agreement. He noted the opportunity offered by the Conference to develop proposals for strengthening the implementation of the Agreement. To that end, a wealth of information had been provided by several States and organizations.[2] Highlighting the finding of FAO that approximately 30 per cent of stocks of highly migratory tuna and tuna-like species and nearly two thirds of straddling and high-seas fish stocks were overexploited or depleted, the President expressed the hope that the Conference would generate ideas and commitments on practical steps to implement the Agreement in ways that would better fulfil its objectives and address the status of those resources.

9. The President recalled that the Conference was mandated to review and assess the adequacy of the provisions of the Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions, but not to amend the Agreement. He stressed that the Conference would proceed in an open and inclusive manner, with all participants having a reasonable chance to contribute.

10. The Director of the Division made a statement on behalf of Nicolas Michel, Under-Secretary-General for Legal Affairs, the Legal Counsel. He stated that the Agreement was considered to be the most important legally binding global instrument for the conservation and management of fishery resources since the adoption of the United Nations Convention on the Law of the Sea in 1982. The Agreement elaborated on the provisions of the Convention, in particular those related to the strengthening of flag States' duties in respect of their vessels fishing on the high seas and the role of subregional and regional fisheries management organizations and arrangements. The Agreement, which also took into account the

[2] See documents A/CONF.210/2006/7, A/CONF.210/2006/8, A/CONF.210/2006/9 and A/CONF.210/2006/10. Information provided by intergovernmental organizations, including FAO and regional fisheries management organizations, prior to the meeting was posted on the website of the Division (www.un.org/Depts/los/convention_agreements/review_conf_InputsIGOs.htm). Several States and organizations also circulated information during the meeting.

requirements of developing States, introduced port State controls to promote compliance with high-seas fisheries conservation and management measures, and new approaches to fisheries management such as the precautionary and ecosystem approaches. The Legal Counsel stressed that, as a result of the Agreement, the management of high-seas fisheries had been increasingly based on the principles of long-term sustainability of fishery resources, that several States had adopted national laws and regulations addressing conservation of stocks, flag State responsibilities and port State control, and that cooperation for setting up new regional fisheries management arrangements to manage high-seas areas or species not covered by existing arrangements had intensified. In addition, an assistance fund had been established by the General Assembly under Part VII of the Agreement to assist developing countries that are parties to the Agreement.

11. The Legal Counsel noted, however, that several fisheries were still subject to unsustainable fishing practices, including overfishing and illegal, unreported and unregulated fishing, and to the use of unselective fishing gear and techniques resulting in excessive by-catch and discards and adverse impacts on marine ecosystems. More could thus be done to ensure that the Agreement was effectively implemented, including increasing the number of parties to the Agreement and addressing the obstacles that had prevented some States from becoming parties.

D. Rules of procedure

12. Stressing that the Review Conference should focus on matters of substance, the President urged delegates not to dwell on the rules of procedure, which had been debated at length during the fifth round of informal consultations of States parties to the Agreement. He reiterated that the Conference would be inclusive, and expressed the hope and expectation that the Conference would adopt its final report on the basis of general agreement. A vote would only be taken if all efforts at achieving consensus failed.

13. Several non-parties expressed their strong reservations concerning certain provisions of the provisional rules of procedure (A/CONF.210/2006/6), noting that, in view of the objectives of the Conference as well as the letter and spirit of the Agreement, States parties to the Agreement, non-parties and other entities referred to in article 36 of the Agreement should participate in the Conference with equal rights. They also emphasized that only with broad participation and wide support for the outcome would the Conference be able to further promote the effective implementation of the Agreement.

14. One State non-party expressed dissatisfaction with the manner in which the rules of procedure had been discussed at the fifth round of informal consultations, noting that few rules had actually been discussed and that certain rules affecting issues of substance had not been debated. The delegation proposed substituting "States parties" with "participating States" in several rules. Another State non-party, with the support of some other non-parties, proposed that the Conference not formally adopt the rules of procedure, using them on a provisional basis instead, and focus on the adoption of decisions on substantive issues by consensus among all participating States.

15. Several States parties to the Agreement stressed the need to refrain from reopening discussions on this issue and recalled statements of confidence by the

President and several States, at the closing session of the fifth round of Informal Consultations of States parties to the Agreement, that there would not be any need to resort to voting during the Review Conference, because inclusive participation in a spirit of cooperation and understanding would prevail instead.

16. Upon a request for advice by the President as to which rules governed the adoption of the provisional rules of procedure by the Conference, a representative of the Office of the Legal Counsel indicated that, should participating States fail to reach consensus, the Conference should adopt the provisional rules of procedure on the basis of the rules of the convening authority, which, in this case, was the Agreement, more specifically its article 36. He stated that States parties were to interpret that article and determine the manner in which the rules should be adopted.

17. One delegation stressed the need to strike a balance between the practical aspects of the issue, including the need to secure broad participation for the effective implementation of the Agreement, and its legal aspects as outlined by the representative of the Office of the Legal Counsel.

18. The President proposed that the rules of procedure remain provisional and be used as such during the Conference, with the understanding that the Conference would proceed to the formal adoption of the provisional rules of procedure if and when necessary. The Conference agreed with the President's proposal.

E. Adoption of the agenda

19. The Conference adopted its provisional agenda without amendment as document A/CONF.210/2006/11.

F. Election of officers other than the President

20. In accordance with rule 10 of the provisional rules of procedure and giving due consideration to geographic representation, the President invited nominations for five Vice-Presidents from States parties to the Agreement and two Vice-Presidents from non-parties, who, together with the President, would constitute the Bureau of the Review Conference, pursuant to rule 15 of the provisional rules of procedure.

21. The Conference elected Marcos Lourenço de Almeida (Brazil), Sainivalati S. Navoti (Fiji), Famoudou Magassouba (Guinea), Dmitry Gonchar (Russian Federation) and Fernando Curcio Ruigómez (Spain) as Vice-Presidents from among States parties. Andrés Couve (Chile) and Liu Zheng (China) were elected as Vice-Presidents from among States non-parties.

G. Organization of work

22. The President introduced the proposed organization of work as contained in document A/CONF.210/2006/4, which was adopted by the Conference.

23. The Conference established a Drafting Committee pursuant to rule 10, paragraph 2, of the provisional rules of procedure, chaired by Mr. Curcio (Spain), a member of the Bureau.

24. The President indicated that the Drafting Committee was entrusted with identifying and consolidating areas of general agreement following plenary discussions on the review and assessment and on proposals for strengthening the effectiveness of the Agreement. The work would proceed on the basis of discussions on each cluster of issues as outlined in the organization of work. The results of the work of the Drafting Committee would then be submitted to the plenary for approval.

25. The Drafting Committee convened ten times to negotiate elements to be incorporated in the final report of the Review Conference, relating to the conservation and management of stocks, mechanisms for international cooperation and non-members, monitoring, control and surveillance and enforcement, developing States and non-parties and future reviews of the Agreement.

H. Credentials of representatives to the Review Conference

26. In accordance with rule 8 of the provisional rules of procedure, on 23 May 2006, the Review Conference appointed a Credentials Committee of nine members from representatives of the following States parties to the Agreement: Germany, India, Mauritius, Norway, Saint Lucia, South Africa, Sri Lanka, Ukraine, and Uruguay.

27. The Credentials Committee held two meetings, on 24 and 26 May 2006. It elected Mr. Amarawansa Hettiarachichi (Sri Lanka) as Chairperson and Mr. Patrick Jacobs (South Africa) as Vice-Chairperson. The Committee examined and accepted the credentials of representatives to the Review Conference from 97 participating States and the European Community.

28. On 26 May 2006, the Review Conference approved the first and second reports of the Credentials Committee (A/CONF.210/2006/13 and A/CONF.210/2006/14).

I. Presentation of the report of the fifth round of informal consultations of States parties to the Agreement

29. The Conference took note of the report of the fifth round of informal consultations of States parties to the Agreement[3] introduced by the President. The report had been prepared by the chairman of the informal consultations with the support of the Secretariat.

J. Consideration of the report on the status of the assistance fund

30. The representative of FAO presented the financial report on the status of the assistance fund established under Part VII of the Agreement (A/CONF.210/2006/2). He noted that contributions to the fund had been received from the United States of America, Iceland and Norway. The first instalment of the contribution from Canada had also been received. The total of contributions to date amounted to $417,000. Two requests for travel assistance to attend the Review Conference had been

[3] Available on the Division's website at (www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm).

received in January 2006, and 10 requests for travel assistance had been received in total. One request had been received from the South East Atlantic Fisheries Organization (SEAFO), on behalf of two States, to allow their participation in the annual meetings of SEAFO. To date, $65,000 had been used from the assistance fund. The representative of FAO advised that applications for travel assistance must be made at least one month in advance of the intended travel so as to ensure timely administrative processing of the request.

31. The Conference took note of the report presented by FAO on the status of the assistance fund.

III. Substantive matters

A. General statements

32. Several delegations highlighted the importance of the Agreement, improvements in its implementation and the growing number of States parties to the Agreement. A number of non-parties announced their intention to become States parties in the near term. Some delegations stressed the fact that the Agreement had only entered into force recently and needed to mature as countries incorporated its provisions into national laws and policies; highlighted the importance of the review process; and called for full implementation of existing international fishery-related instruments rather than creating new ones or amending existing ones.

33. Many delegations emphasized the importance of obtaining universal participation in the Agreement to ensure its effectiveness, and stated that the Review Conference should be a catalyst to promote broader ratification. Several delegations highlighted that one of the objectives of the Review Conference was to address the challenges faced by some non-parties.

34. A group of nine Latin American and Caribbean States[4] presented a declaration (A/CONF.210/2006/12) in which they underlined the issues that had prevented them from becoming parties to the Agreement. These included issues related to the boarding and inspection procedures provided for in articles 21 (Subregional and regional cooperation in enforcement) and 22 (Basic procedures for boarding and inspection pursuant to article 21), and the need to ensure that the provisions of the Agreement were not interpreted or applied contrary to the rights, obligations and interests of coastal States as provided for under the Convention. The declaration also stated that the review process should be conducted in accordance with article 4 of the Agreement, on the relationship between the Agreement and the Convention, and that articles 5 (General principles), 6 (Application of the precautionary approach) and 7 (Compatibility of conservation and management measures) should be interpreted and applied in the context of and in a manner consistent with the Convention. In that respect, the application of article 7 should not compel coastal States to adopt any measures within areas under their national jurisdiction or to take any action that would affect their sovereign rights in such areas. The declaration further emphasized that fishing on the high seas should be in conformity with articles 63, 64, 116 and other provisions of Part VII of the Convention. It also

[4] Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico and Peru.

proposed that the outcome of the Review Conference include those remarks as interpretative principles.

35. A number of delegations called for the adoption of technical annexes to the Agreement in order to address such issues as high-seas bottom trawling and compensation for damages resulting from boarding and inspection carried out contrary to international law.

36. One observer stressed the need to maintain the integrity of the regime provided for in the Agreement and to avoid adopting measures that were weaker than its current provisions, in particular with regard to enforcement and the compatibility of measures.

37. Other observers highlighted the interests of artisanal fishers and the sustainability of their fishing methods, and the need to transform regional fisheries management organizations into regional ecosystem management organizations, for which international management guidelines and time-bound goals would be applicable.

B. Review and assessment of the adequacy of the provisions of the Agreement and means of strengthening the substance and methods of their implementation

38. The President requested delegations to organize their interventions on the effectiveness of the Agreement around the three framework questions stipulated in the organization of work: (a) In which areas is implementation of the Agreement proceeding generally well? (b) In which areas is implementation of the Agreement at an early stage or has there been little progress in implementation? and (c) What means could be proposed to strengthen the substance and methods of implementation of the Agreement? He noted that the document also identified four separate clusters of issues as the basis for discussions on this agenda item:

(a) Conservation and management of stocks;

(b) Mechanisms for international cooperation and non-members;

(c) Monitoring, control and surveillance, and compliance and enforcement;

(d) Developing States and non-parties.

39. On the basis of discussions on these clusters in plenary, as summarized in sections 1 to 5 below, the Drafting Committee prepared draft elements for the text of the outcome of the Review Conference (see annex).

1. Consideration of elements relating to the conservation and management of stocks

40. The President invited delegations to express their views on the issues relating to the conservation and management of stocks as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5).

41. Several delegations highlighted the progress achieved in the sustainable management of different species since the adoption of the Agreement, underlining the importance of the Agreement in ensuring the long-term sustainability of fisheries

resources and thus the need for its improved implementation. Several delegations stressed that ensuring the sustainability of fish as a resource was of utmost priority owing to the fact that their societies' culture, health, economies and development were dependent upon the proper conservation and management of shared fish stocks.

42. With regard to the effect of the Agreement on non-parties, many participants observed that the standards of conservation and management set forth in the Agreement had been widely disseminated and implemented at the global, regional and national levels. It was also pointed out that the Agreement had influenced fishing operations in the high seas by States and had inspired regional fisheries management organizations to incorporate the standards of the Agreement into their regulations.

(a) Adoption of measures

43. Several delegations acknowledged the importance of adopting measures to implement the precautionary and ecosystem approaches, and stressed that the lack of scientific information should not prevent the adoption of necessary measures. Some were of the view that the mandate and capacity of regional fisheries management organizations should be expanded beyond target species, from a single to a multi-species approach, in order to incorporate ecosystem considerations into their management decisions. One delegation stated that criteria should be developed to assist management bodies in taking decisions that reflect these approaches. It also pointed out that if the objectives of the Agreement were to be realized, the precautionary approach should be applied widely, both within and beyond areas of national jurisdiction.

44. The importance of science for conservation and management decisions was stressed. However, it was pointed out that even in cases where there was scientific advice, States and RFMOs had taken decisions that did not always take it into account. Furthermore, where measures had been adopted, compliance with those measures by members and non-members of regional fisheries management organizations had been problematic.

45. Several States, both parties and non-parties, described the measures they had adopted to implement the Agreement, both measures through national legislation and regional fisheries management organizations. Those measures included the establishment of total allowable catches for tuna in the exclusive economic zone; measures to manage fishing capacity and effort; national observer programmes and programmes for boarding and inspection; efforts to implement the ecosystem approach; measures for the licensing and authorization of vessels; the setting up of monitoring systems and research centres, and measures for port States, in particular, to combat illegal, unreported and unregulated fishing. Developments in the Caribbean region were described, with a special emphasis on the difficulties related to the lack of resources. Despite those difficulties, a number of States in the region had taken steps to implement the Agreement. In particular, landing sites had been designated to gather official data for reporting purposes, and registration and licensing systems for vessels had been improved. Reporting to regional fisheries management organizations had increased, together with the use of vessel monitoring systems at the regional level.

46. A number of developing States, including small islands developing States, underlined the need for more focused assistance in the development of conservation and management measures. It was also noted that increased assistance would encourage further ratifications. A number of non-parties indicated that although they had not yet joined the Agreement, they had adopted measures to implement its conservation and management provisions. One non-party reported that it had implemented in practice the provisions concerning the conservation and management of stocks through regional fisheries management organizations and had developed aquaculture as an alternative to fishing. Timely interim measures to guarantee the conservation of stocks on the high seas were called for.

47. A number of delegations noted that coastal States and States whose nationals fish for straddling fish stocks and highly migratory fish stocks have an obligation to cooperate to agree upon compatible measures for the conservation of such stocks both within and beyond the areas of national jurisdiction. Some non-parties stated that all States had the duty to respect the principle of compatibility enunciated in article 7 of the Agreement, in order to ensure that measures adopted by distant-water fishing nations were compatible with those adopted by coastal States in areas under their national jurisdiction. In particular, measures for managing fisheries on the high seas should respect the rights of coastal States, as provided for in the Convention. It was stressed that the rights of landlocked States should also be taken into account.

48. In addition, observers from a number of regional fisheries management organizations described the conservation and management measures their organizations have adopted to implement the Agreement. The following were identified as significant challenges faced in implementing the Agreement: adoption of measures based on the precautionary approach; ensuring that decision-making was based on the best available science; agreeing on transparent deliberations; effectively monitoring and enforcing agreed measures; and establishing effective reporting systems. One regional organization pointed out that although the measures that it had adopted in relation to some stocks had been successful, measures for other stocks had not prevented overfishing.

(b) Overfishing and capacity management

49. It was stated that there was a need to regulate capacity commensurate with the resources available. This would also help in addressing the issue of illegal, unreported and unregulated fishing. States which had adopted measures to reduce capacity urged other States to do the same. One delegation proposed that organizations responsible for straddling fish stocks develop plans that would reduce levels of fishing capacity by 2012, and that those responsible for highly migratory fish stocks should, by 2007, adopt a plan for global capacity management. Several delegations underlined that the Review Conference should not aim at establishing an overall policy for capacity management, as that was the task of FAO. It was also noted that regional fisheries management organizations had a particularly important role in efforts to ensure proper management of high-seas stocks and adopt effective solutions that would also address the issue of capacity. They were invited to cooperate among themselves by exchanging experiences and best practices regarding regional measures for capacity management. Japan informed the Conference that it would host a joint meeting of the five regional fisheries management organizations regulating tuna fisheries in January 2007 to review their

cooperation. That meeting was identified as a forum to further discuss the issues of overfishing and capacity management.

50. A number of developing countries stressed that any measure to reduce capacity within regional fisheries management organizations must not be detrimental to States where fisheries were still being developed, as that would perpetuate the situation of inequality in favour of traditional fishing countries.

51. Other delegations emphasized the importance of eliminating fisheries subsidies by developed States in order to reduce overcapacity, and indicated that the Review Conference should call on States to implement the international plan of action for reducing fishing capacity.

52. One regional fisheries management organization indicated that, as there were too many vessels operating in its convention area, it had adopted a plan for regional management of fishing capacity. The plan set a target for capacity and provided that only vessels registered with the organization were authorized to fish in the region. New vessels could enter the organization's register only when vessels of equal size were removed. The plan had restrained the growth of the fleet, but had not met the goal of reduction.

53. A non-governmental organization stated that commitment to eliminating overcapacity already existed, and it should be acted on, including through a scrapping programme.

(c) Effects of fishing on the marine environment

54. Many participants stated that the protection of sensitive marine ecosystems, including key habitats, was of paramount concern, and suggested that States and regional fisheries management organizations be encouraged to establish scientific criteria for the management of marine protected areas for fisheries purposes. A delegation stressed that, according to articles 5 (General principles) and 6 (Application of the precautionary approach) of the Agreement, States were obligated to promote the protection of ecosystems. Those articles should also be reflected in the mandates and practices of regional fisheries management organizations.

55. A number of delegations noted that articles 5 and 6 of the Agreement were already being implemented to some degree. For example, one State had declared its exclusive economic zone a whale sanctuary. However, more should be done, including on the application of an ecosystem approach. A State Party proposed the development of a technical annex to the Agreement which would provide guidelines for the application of ecosystem approaches to the conservation and management of straddling fish stocks and highly migratory fish stocks. Other delegations underlined the need for a global approach for the implementation of the ecosystem approach.

56. Fishing practices that might impact sensitive environments, such as bottom trawling, were highlighted by some delegations as an issue of particular concern. One delegation stated that the issue had been dealt with by the General Assembly and should not be the focus of the Review Conference. Another delegation highlighted the need for precautionary action to address unregulated bottom trawling and proposed, for areas not covered by any regional fisheries management organization, an interim prohibition on bottom trawling until such an organization was established and effective conservation and management measures were adopted.

For areas within the competence of existing regional organizations, it was proposed that those organizations be allowed some time to institute effective conservation and management measures on their own. A moratorium on bottom trawling in the high seas was supported by another delegation.

57. One delegation noted that the Secretary-General's report (A/CONF.210/2006/15) did not contain any references to measures taken by regional fisheries management organizations to protect marine biodiversity, and suggested that those organizations consider measures such as area closures.

58. As for waste, discards and catch by abandoned gear, one delegation noted that measures to address such practices could improve the status of fish stocks and should be welcomed by the Review Conference as a contribution to the implementation of the Agreement.

59. One observer pointed out that, in accordance with the recommendations of the World Summit on Sustainable Development, networks of marine protected areas should be established, for example by setting aside pilot areas. Another observer stressed that the destructiveness of some fishing practices needed to be addressed, including, in some cases, by prohibiting them. He proposed that the Conference take concrete measures with regard to the implementation of ecosystem management. An observer further proposed that users of high-seas resources demonstrate that their activities did not harm the environment, for example by undertaking environmental impact assessments. Furthermore, new and exploratory fisheries should be prohibited until their effect on the environment has been assessed. It was stated that high-seas bottom trawling was a clear example of the failure to adopt measures required by articles 5, 6 and 7 of the Agreement. A moratorium on high-seas bottom trawling was thus considered essential until concrete and effective measures were in place to conserve vulnerable deep-sea ecosystems.

(d) Fisheries not regulated by a regional fisheries management organization

60. The central role of regional fisheries management organizations in the implementation of the Agreement was noted by most delegations. The establishment of the Western and Central Pacific Fisheries Commission (WCPFC), SEAFO and the Southern Indian Ocean Fisheries Arrangement, and the ongoing efforts to establish new arrangements, for example in the South Pacific and in the Northwest Pacific, were welcomed. Furthermore, the need to strengthen and modernize the mandates of existing organizations, in particular to address geographic and species coverage, was noted. Several delegations highlighted the need to strengthen international cooperation and institutions that worked on a regional basis and to increase the coverage of the regional fisheries management organizations to encompass not only the conservation and management of high-seas fisheries resources but also the interactions between fisheries and the environment as a whole.

61. The Republic of Korea informed the Conference that, with Japan and the Russian Federation, it was participating in a regional initiative to establish a new regional fisheries management organization in the Northwest Pacific to regulate bottom trawl fishing, including through the development of interim measures for the management of bottom trawling and for the conservation of vulnerable marine ecosystems, and stated that the three States had agreed to cooperate in the compilation, analysis and exchange of data on bottom trawling in the region.

62. One delegation stated that it did not favour the creation of new regional fisheries management organizations due to the financial burden imposed on their members. However, as the Southwest Atlantic Ocean was not covered by a regional fisheries management organization, there was a will to discuss the creation of one for that area. It was also stated that the establishment of new regional organizations should not be detrimental to States where fisheries were at the early stages of their development.

63. Another delegation recommended the establishment of a regional fisheries management organization to cover the North Pacific Ocean and stated that, in the meantime, there was a need to adopt interim measures to protect that area from destructive fishing practices.

64. Some delegations stated that the general principles of the Agreement should be applied to discrete fish stocks in the high seas. One delegation stated that it would support the idea of FAO developing technical guidelines, in consultation with other relevant intergovernmental organizations, for conserving and managing high-seas discrete stocks. The guidelines should incorporate provisions from the Agreement and from other instruments regarding the precautionary approach, biological vulnerabilities and data collection. Another delegation stated that, as regional fisheries management organizations were competent to manage high-seas stocks within their geographical coverage, their work could be facilitated by having FAO conduct a technical study to identify discrete stocks around the world with a view to developing guidelines for the application of the Agreement's principles to discrete stocks.

65. One observer noted that several regional fisheries management organizations whose existence pre-dated the Agreement had yet to bring their mandates into line with its provisions. The observer supported efforts to modernize regional arrangements to address gaps in regional fisheries governance, including for discrete stocks in the high seas. Another observer stated that it was not clear what the benefit of establishing FAO guidelines for management of high-seas discrete fish stocks would be. The Review Conference should instead agree to apply the provisions of the Agreement to all stocks.

(e) Data collection and sharing

66. Several delegations stated that the collection and sharing of data was a key element, both for the adoption of conservation and management measures and in terms of transparency of management. Countries should, therefore, provide full and comprehensive data to FAO and all members of regional fisheries management organizations should provide accurate and timely data on their activities to ensure a solid scientific basis for management measures. At the same time, it was noted that the lack of capacity in developing countries to collect data had to be addressed.

67. One delegation stated that, as the quality of the information available affected stock assessments, incomplete data increased the need for precaution. It was further stated that, as all regional fisheries management organizations had adopted data collection and reporting measures to conform with the Agreement's minimum requirements, it would be valuable to call on the secretariat of each regional organization to conduct an annual audit of data submitted by members for accuracy, timeliness and completeness. It was also suggested that regional organizations could require their members to ensure that they were meeting compulsory reporting

requirements. Those members failing to do so would be required to prepare plans of action to rectify the situation or face sanctions.

68. One delegation stated that monitoring was important but posed particular challenges, especially at the national level, where effective legislative action had to be taken to set up efficient monitoring systems and research centres. In order to ensure adequate data on fish stocks, permanent surveillance was necessary, which required substantive resources that were not always available to developing countries. Regional and subregional cooperation could assist in that regard, through the establishment of joint research missions.

69. One regional fisheries management organization reported that it was undertaking data collection and sharing through creative arrangements in cooperation with other organizations. Existing data gaps were associated with inadequate data submissions, including from developing members, and also with respect to illegal, unreported and unregulated fishing. Another regional organization reported that it had one of the most comprehensive data sets on highly migratory fish stocks, and it had provided such data to Governments and relevant organizations. It had published advice regarding some tuna species, including the status of the stocks of tuna and consideration of the effects of fishing on the marine ecosystem.

2. Consideration of elements relating to mechanisms for international cooperation and non-members

70. The President invited statements on issues relating to mechanisms for international cooperation and non-members as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5).

71. One delegation noted that, besides regional fisheries management organizations, there were other mechanisms for international cooperation, for example in the context of the International Agreement on the Conservation of Albatrosses and Petrels and action taken by some States to address the issue of noise pollution. The importance of considering wider contexts for cooperation in the conservation of oceans was underlined as an essential element in the implementation of the Agreement. Another delegation highlighted bilateral cooperation as an important mechanism for international cooperation. A non-party noted that, as required under article 118 of the Convention, international cooperation should occur even where no regional organizations existed, in order to ensure conservation and sustainable use of fisheries resources both in the high seas and in areas under the jurisdiction of coastal States.

(a) Integrity of regional regimes

72. Many delegations reiterated that regional fisheries management organizations were at the centre of the implementation of the conservation and sustainable management measures contained in the Agreement. It was noted that the effectiveness of the Agreement depended on the effectiveness, coverage and membership of regional organizations, as well as the degree of cooperation among them. As a consequence, action should be taken to fill gaps in coverage by regional organizations, both in terms of geographic and species coverage. Those

organizations should also modernize their mandates, increase participation of interested States and establish accountability mechanisms.

73. The importance of achieving harmonization of measures to ensure consistency was also highlighted. To that end, several delegations recommended increased cooperation among regional fisheries management organizations. One delegation stated that cooperation was also needed among international agencies that provided the policy foundation, advice and tools that were part of, or affected, fisheries governance.

74. Japan informed the Conference that the joint meeting of the five regional fisheries management organizations regulating tuna fisheries, to be held in January 2007, was expected to adopt an action plan to coordinate their conservation and management of tuna, including through making measures consistent across the organizations. One delegation suggested the consideration of a similar initiative for regional organizations involved in managing straddling fish stocks.

75. One observer noted that regional fisheries management organizations played an effective functional role and should provide the best available information on the number of States and vessels engaged in unregulated fishing and other relevant statistics to serve as a basis for measuring progress.

(b) Fishing activity by non-members

76. Several delegations stressed the duty to cooperate in the conservation and management of straddling fish stocks and highly migratory fish stocks. Many delegations emphasized that members of regional fisheries management organizations should continue to encourage non-member States and entities fishing in areas under the competence of those organizations to participate in their activities by immediately joining or agreeing to apply the conservation and management measures established by them. Non-members of regional fisheries management organizations could cooperate either by making a formal commitment to apply their decisions or by seeking cooperating status with those organizations. The status of cooperating non-member should be contingent on the applicant's record of compliance with the organization's measures, its contribution to the organization, including the provision of data, and its efforts to become a member within a reasonable time frame, where possible. Non-cooperating States should abstain from fishing in the Convention area. One delegation stated that the lack of cooperation on the part of non-members undermined cooperation mechanisms and each regional organization should address the issue on the basis of international law.

77. Several delegations stressed that an open and participatory approach within regional fisheries management organizations was an important element of the obligation to cooperate under the Agreement, in order to allow all States and fisheries entities to effectively participate in the work of the regional organizations. States and fisheries entities should not be prevented from taking part in the activities of regional organizations for political or legal reasons.

78. A number of delegations emphasized that there remained cases where States were unwilling to join regional fisheries management organizations or to apply conservation and management measures in respect of their vessels, owing to the lack of incentives for them to join such organizations. Some delegations suggested that

the allocation of quotas would constitute an incentive for non-members to participate in the work of regional fisheries management organizations.

79. Several delegations drew attention to the importance of commercial or market measures as tools to encourage States to join regional fisheries management organizations. Examples of how market measures had already been used to this end were presented. Several delegations highlighted the importance of adopting market measures in compliance with international law, in particular with World Trade Organization instruments.

80. Several delegations noted that a number of developing States lacked the means to join regional fisheries management organizations and to implement their conservation measures. Sharing technical knowledge and expertise, the provision of assistance and the enhancement of enforcement capabilities were important means of encouraging their participation in regional organizations. It was emphasized that the financial implications of participating in regional fisheries management organizations and the uneven allocation of fishing rights between developing and developed States discouraged some developing States from joining. Some delegations expressed dissatisfaction with allocations based on historical catches, as they favoured States with well-established industrial-size fleets and hampered the development of States with emerging fisheries. One delegation underlined that this situation was not in conformity with articles 116 (Right to fish on the high seas) and 119 (Conservation of the living resources of the high seas) of the Convention or with article 25 (Forms of cooperation with developing States) of the Agreement. The International Commission for the Conservation of Atlantic Tunas (ICCAT) was mentioned as an example of a regional fisheries management organization that had incorporated factors beyond historical catches in its allocation system.

81. Several delegations stated that it was essential to deter illegal, unreported and unregulated fishing, as it undermined the work of regional fisheries management organizations. The issue of flags of convenience, including the phenomenon of re-flagging, and the need to clarify the concept of the "genuine link" were considered to be important by a number of delegations. Several delegations supported the use of positive and negative vessel lists, provided that such lists were used in a transparent and consistent manner. One delegation recommended that regional fisheries management organizations use full catch documentation systems in addition to measures already taken to deter illegal, unreported and unregulated fishing.

82. Other delegations encouraged the use by regional fisheries management organizations of vessel registers and other measures to exclude fishing activities by vessels non-members of the organizations. It was also emphasized that cooperation was needed both among organizations and among States, for example through the International Monitoring, Control and Surveillance Network. The need to adopt port States measures, including the need to agree on a definition of "ports of convenience", was also underlined.

83. Most representatives of regional fisheries management organizations recognized that fishing by non-members occurred for a number of reasons. The representative of one organization cited the example of those States which, because of the low level of their catch, could not become members. Some of those States nevertheless took into account conservation and management measures established by the organization, and reported their catch. The organization had also granted

fishing rights to some entities with the status of cooperating non-members. That status was reviewed every year and cooperating non-members were required to conform to management measures adopted by members.

84. One observer noted that some regional fisheries management organizations had made progress towards instituting mechanisms for apprehending contravening vessels under flags of non-members States. In relation to illegal, unreported and unregulated fishing, it was pointed out that since it was a global problem stemming mostly from the existence of flags of non-compliance, only a global mechanism could be appropriate. The development of a new implementing agreement to deal with illegal, unreported and unregulated fishing, based on the precautionary principle, ecosystem-based management approaches and prior environmental impact assessments, was recommended.

(c) Functioning of regional fisheries management organizations

85. It was widely agreed that the improvement of regional organizations' functioning and alignment of their conventions and adopted measures with the Agreement's standards should be a priority. In particular, with respect to decision-making procedures, several delegations observed that the "opting-out" procedure undermined the organizations' credibility, effectiveness and conservation measures. One delegation recommended that the Conference urge regional fisheries management organizations to ensure that "post opting-out" behaviour be constrained by (a) rules preventing opting-out parties from undermining conservation; (b) clear processes for dispute resolution; and (c) a precautionary regime applicable in the interim. Another delegation stated that opting-out members could be made to provide a written explanation for their reasons to opt out and specify the alternative measures they intended to implement. Attention was also drawn to the fact that some organizations do not allow opt-outs.

86. Several delegations proposed that the Conference indicate how regional organizations could be modernized, taking into account the progress made in recent fisheries instruments such as the Agreement. A number of delegations welcomed measures taken by specific regional organizations to modernize their mandates, and recommended that the Conference call upon all regional organizations to undertake a similar process, as a matter of the highest urgency. Several States parties also noted that interim measures could be adopted to implement modern fisheries policies, while new or updated conventions and agreements were undergoing the process leading to their entry into force.

87. It was further underlined that in the process of modernization, priorities should include the implementation of precautionary and ecosystem-based approaches to fisheries management, decision-making that facilitates long-term conservation and sustainable use of fish stocks, processes to ensure the implementation of decisions, the establishment of effective monitoring, control and surveillance regimes and the improvement of linkages between governing bodies and scientific advisory bodies. Furthermore, they suggested that States should work within regional fisheries management organizations to establish or strengthen monitoring, control and surveillance regimes, including through joint inspections, dissemination of information, providing for regular compliance review mechanisms and developing observer programmes to collect data, monitor compliance, and report on infringements. It was further suggested that the Review Conference should address

the issue of sanctions, for example by developing criteria for sanctions, keeping in mind that sanctions were a sovereign issue.

88. Several delegations called for a process to review the performance of regional fisheries management organizations. One delegation pointed out that reviews could be carried out on the basis of different approaches, either through a self-assessment or through an external review process. A suggestion that regional organizations could initiate periodic performance assessments was supported by many delegations. One delegation called for annual reviews of the organizations' performance. Organizations that already had regular performance reviews, including the North East Atlantic Fisheries Commission and ICCAT, were highlighted as examples for others to follow. It was stated that transparency and independence were critical factors in such reviews. One delegation added that the Review Conference could provide specific guidance for such reviews, which should include independent validation and external evaluation on the basis of a set of criteria to be agreed upon, in order to ensure transparency and accountability. One delegation indicated that it would ask RFMOs of which it was a member to conclude initial self-assessments no later than July 2007. The recommendations of the High Seas Task Force, which included the development of a model for regional fisheries management organizations, were considered a useful initiative that, in the view of some delegations, could be used as a benchmark by all regional organizations. Those organizations should report the results of their assessments and any actions taken to remedy deficiencies to FAO or to future meetings of the Review Conference.

89. In addition, adequate and timely resources were considered essential for regional fisheries management organizations and a number of delegations noted that the organizations could only be as effective as States allowed them to be. The low levels of participation in some regional organizations was problematic, as it did not allow these organizations to achieve their objectives.

90. It was also noted that some regional fisheries management organizations have instituted cooperative mechanisms, which needed to be strengthened and expanded. For example, the Fishery Resources Monitoring System (FIRMS) was described as a partnership between regional fisheries management organizations and FAO to provide high-quality information on the status and trends of fisheries on a uniform basis. FIRMS was also in the process of establishing a global reporting system that could provide useful input for policy decisions.

91. One delegation noted that although advances in providing for transparency in the work and decisions of regional fisheries management organizations had been made in recent years, opportunities for participation by intergovernmental or non-governmental organizations remained limited or unduly burdensome in some cases, as some regional organizations maintained restrictive application procedures. The delegation was of the view that participation of intergovernmental and non-governmental organizations would inject important expertise into the work of regional fisheries management organizations. It thus suggested that all regional fisheries management organizations should make a concerted effort to provide for meaningful participation of intergovernmental and non-governmental organizations in all their meetings.

(d) Participatory rights

92. One delegation stated that it was encouraged by the level of participation in regional fisheries management organizations. Several delegations encouraged the participation of all interested States in regional fisheries management organizations as a way to ensure international cooperation. Such participation could take place in various ways: by becoming a member; by formally committing to applying the measures adopted by the organization; or by becoming a cooperating non-member. It was further stated that, in order to participate in a regional organization, States had to demonstrate a real interest in the fishery coupled with effective control over their ships.

93. Several delegations underlined that while articles 10(b) and 11 of the Agreement provided the framework for participatory rights, further work might be needed to develop more detailed criteria for participatory rights. A number of delegations pointed out that particular attention should be paid to the effective participation in the work of regional fisheries management organizations by States with limited capacity. Some delegations emphasized that presently participatory rights were based on historical catches and needed to be improved in order to ensure a more equitable distribution of the resources. That applied in particular to developing countries, which had participated minimally in fishing activities in the past, but should now be granted equitable participatory rights.

94. Several delegations proposed the granting of fishing rights to developing States by diminishing their own quotas. It was made clear, though, that this proposal should be implemented in good faith and not used to grant fishing rights to vessels from other States, which would not have otherwise been granted fishing allocations by their original flag States. However, decisions on the allocation of fishing opportunities should mainly be based on scientific advice and should not be guided solely by economic concerns. Thus, the early development of precautionary measures, both for catch and effort limits as well as sustainable fishing capacity levels, along with allocation criteria that took into account the rights and aspirations of developing countries, was critical. A number of delegations also stated that it was important to enhance transparency and predictability regarding regional organizations' regulations relating to allocations.

95. A number of delegations noted that overfishing was due, at least in part, to the inability of regional fisheries management organizations to agree on the allocation of quotas. One delegation suggested that case studies might be useful to that end. Some delegations indicated that greater attention should be paid to incentives as a means to encourage a greater degree of participation in and compliance with the work of regional fisheries management organizations. In that regard, participatory rights represented a form of incentive to cooperate.

3. Consideration of elements relating to monitoring, control and surveillance and compliance and enforcement

96. The President invited delegations to express their views on issues relating to monitoring, control and surveillance and compliance and enforcement, as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). He drew the attention of the Conference to the fact that even if sound measures were adopted for the conservation and management of straddling and highly migratory fish stocks, sustainable fisheries

could not be achieved without compliance with those measures. Highlighting developments in this area since the adoption of the Agreement, he called upon delegations to identify what additional actions could be undertaken to address, in particular, illegal, unreported and unregulated fishing, both within areas under national jurisdiction and on the high seas, by non-members as well as members of regional fisheries management organizations.

97. Delegations considered monitoring, control, surveillance and enforcement as critical to achieving the objective of sustainability of fish stocks enshrined in the Agreement. A number of delegations noted that the integrity of the regional fisheries management regimes depended on effective compliance with the organizations' decisions, including through cooperation and adequate flag States control. Some delegations stressed that all monitoring, control and surveillance activities and enforcement should be carried out in accordance with international law, in particular the Convention. One delegation underlined the integrated nature of monitoring, control and surveillance and compliance and enforcement mechanisms, which required a strong integration of flag State, coastal State, port State and market State responsibilities for measures to be successful. The same delegation stressed the need to develop incentives to encourage compliant behaviour.

98. Many delegations highlighted illegal, unreported and unregulated fishing as an issue that required urgent attention. They stressed the need for the international community to strengthen regulatory measures, extend the coverage of regional fisheries management organizations and improve enforcement capabilities to fight illicit activities.

99. Several delegations outlined the measures that they had adopted in the field of monitoring, control and surveillance and compliance and enforcement mechanisms to implement relevant provisions of the Agreement, individually, on a bilateral basis, or through regional fisheries management organizations. Several delegations indicated that although they were not parties to the Agreement, their domestic legislation included measures that addressed compliance and enforcement and reflected the provisions of the Agreement or the FAO Compliance Agreement and the FAO Model Scheme on Port State Measures. Observers from a number of regional fisheries management organizations reported on the measures adopted by their respective organizations.

(a) Implementation of flag State duties

100. Many delegations stressed the important role of flag States for the effective implementation of the Agreement. They drew attention to the threat posed, both to fisheries and, in terms of loss of revenue, to developing coastal States, by lack of will or capacity of flag States to properly ensure compliance by vessels flying their flag with the obligations imposed upon them by the Agreement and other relevant international instruments. It was emphasized that flag States must also ensure compliance with subregional, regional and global conservation measures. One delegation suggested that flag States that were unable to comply with their obligations should not be allowed to be flag States. Another delegation stressed that all States have the right to fish on the high seas pursuant to the Convention, but that that right was conditional upon compliance by their nationals with measures for the conservation of living resources in the high seas adopted through bilateral or multilateral cooperation, including through regional fisheries management

organizations. It expressed deep concern over the absence of cooperation with coastal States to address illegal activities of vessels operating on the high seas in areas adjacent to the exclusive economic zone of coastal States and not covered by a regional fisheries management organization.

101. Other delegations reiterated the need to better define the obligations of flag States and the "genuine link", including by addressing the problems raised by the use of flags of convenience. Attention was drawn to the guidelines of the High Seas Task Force on flag State performance with respect to high-seas fishing vessels. It was suggested that more detailed guidelines on flag State performance could be based on the requirements for flag State responsibilities set out in the FAO International Plan of Action on illegal, unreported and unregulated fishing, and that an assessment of the legislation of States be done to determine whether they have enacted provisions requiring vessels flying their flag not to operate with respect to areas or fisheries governed by regional fisheries management organizations of which such States are not members. One delegation suggested that access agreements could include obligations for flag States to cooperate with coastal States with regard to monitoring, control and surveillance.

102. One delegation urged a wider application of the mechanism, provided for in the Agreement, that allows States members of a regional fisheries management organization to board and inspect fishing vessels that operate in areas under the competence of that organization. Several States parties noted that the boarding and inspection provisions in the Agreement were a central part of the Agreement and reflected a careful balance between the interests of the coastal State and distant water fishing nations. One delegation suggested that regional fisheries management organizations should ensure that they have a sufficient inspection and boarding regime, and that safeguards be developed against the abuse of rights. One delegation stated that the concurrent operations of legitimate and illegitimate vessels made it difficult for authorities to distinguish between those two types of operations and thus to board and inspect vessels in conformity with international law. Several delegations drew attention to the availability of effective alternative mechanisms to the boarding and inspection procedures provided for in the Agreement. They stressed that boarding and inspection could result in the use of force, might be carried out contrary to international law, and therefore should only be used with the consent of flag States. They called for support within regional fisheries management organizations for the development of such alternative mechanisms. Some delegations noted that safeguards were already contained in the Agreement to address concerns regarding boarding and inspection.

103. A number of delegations pointed out that the issue of flag State implementation did not arise only in connection with fishing vessels, but also with support vessels utilized for trans-shipment and refuelling operations. The need to regulate the activities of support vessels within the area of competence of regional fisheries management organizations was underlined. One delegation drew attention to the need for States to also regulate the activities of their nationals and companies incorporated under their jurisdiction as an important complement to flag State and port State jurisdiction. In this connection, the case of some regional fisheries management organizations that prohibit their members from flagging or engaging in fishing operations with vessels that have been included in illegal, unreported and unregulated lists was highlighted. It was suggested that States should prohibit their nationals from engaging in activities with such vessels. A number of delegations

also suggested that States could adopt measures against the illegal activities of beneficial owners of the vessels flying their flag.

(b) Investigation, penalization for violations

104. A number of delegations informed the Conference that, for the purpose of monitoring fishing activities carried out by all licensed fishing vessels, vessel monitoring systems had been used, the data of which were often cross-checked with those gathered through physical inspection. One delegation proposed that all vessels capable of fishing on the high seas be required to carry a vessel monitoring system no later than 2008. Several delegations called for dual function to be given to observer schemes as an effective tool through which scientific data could be collected and compliance ensured. The introduction of mandatory satellite-based vessel monitoring systems on all vessels fishing within a regional fisheries management organization's area was identified as an effective step in implementing monitoring, control and surveillance.

105. Several delegations drew attention to the fact that sanctions needed to be significant, not just a cost of operation, in order to act as effective deterrents to non-compliance. For that purpose the need to develop guidelines for sanctions was underlined, with the recognition that the application of sanctions remained a sovereign issue. Judicial cooperation and periodic evaluation of sanctions were also highlighted as appropriate means for improved investigation and sanctioning. It was further noted that flag States possessed the primary jurisdiction to impose sanctions effectively. One delegation stated that, in cases where flag States were unwilling to take action or failed to implement their duties, inspecting States could take action to sanction illegal activities. Another delegation suggested that the use of compulsory indication of origin of fish and fish products could play an important role in deterring illegal activities, including by restricting the marketing of products obtained in violation of conservation and management measures.

106. One observer noted that the unique nature of high seas fisheries, including their remoteness, required enhanced regulatory regimes and mechanisms that went beyond the traditional approaches in place for other areas and for other maritime activities. Sanctions could also be deployed against service industries, such as insurance and finance, which enabled illegal fishing practices to occur.

(c) Use of port State measures

107. Delegations emphasized that the role of port States in inspecting incoming fishing vessels to ensure that they were not in violation of international conservation and management measures was a critical aspect for the successful implementation of the Agreement. One delegation noted that profits from illegal, unreported and unregulated fishing depend on the possibility of access to markets through landing in ports. Several delegations stressed the need to develop measures to monitor marketed fish to ensure that no fish caught in contravention of conservation and management measures was sold. Regional fisheries management organizations were urged to adopt systems to monitor landings of fish, as well as inspections and regulation of trans-shipments, including through agreed upon import and trade prohibition schemes consistent with international law, such as the electronic catch documentation scheme adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

108. Many delegations called for more extensive and coordinated efforts to adopt and implement port States measures, in compliance with article 23 of the Agreement. Support was expressed for the development of an electronic database of port State measures. A number of delegations called for the development of international standards and guidelines to prevent the emergence of "ports of convenience" resulting from the existence of weaker regimes in some port States. Support was expressed for a global legally binding instrument on port State measures as a necessary step against "ports of convenience". In that connection, the FAO Model Scheme on Port State Measures was considered as the international minimum standard for port State control and a necessary reference for the development of a global instrument. One delegation stated that standards for port State measures should be agreed in the context of regional fisheries management organizations. Another delegation cautioned against the development of a global instrument that would reflect a uniform approach, noting that such instruments usually entailed agreement on the minimal common denominator and that securing adherence to such instruments was often challenging. One delegation stressed that the United Nations Convention on the Law of the Sea, in particular article 11, provided for the sovereignty of port States over their port terminals, which entailed full discretion of that State, including the possibility of restricting the use of its ports by foreign vessels engaged in activities incompatible with domestic measures.

109. The observer from FAO outlined developments regarding the FAO Model Scheme, including its endorsement by the General Assembly and several regional fisheries management organizations as the basis for development of port State measures at the regional and national levels. He also highlighted capacity-building programmes undertaken to reinforce States' abilities to combat illegal, unreported and unregulated fishing and implement effective port State measures. Several regional fisheries management organizations informed the Review Conference of some of their measures and initiatives related to port State measures, particularly with a view to combating illegal, unreported and unregulated fishing. One regional organization reported that it required port State members to report to its secretariat the results of all inspections carried out on foreign vessels.

110. The observer from a non-governmental organization called upon the Review Conference to adopt a specific action plan which would include binding port State measures; interim measures, in particular against illegal, unreported and unregulated fishing of cod; and the adoption of new funding for States which lack capacity.

(d) International cooperation

111. Many delegations stressed that the Agreement represented a solid framework to foster regional and international cooperation for monitoring, control and surveillance activities. Despite notable improvements, the persistence of significant illegal, unreported and unregulated fishing indicated that further steps should be taken, in particular in the areas of vessel monitoring systems, observer programmes, port State measures and catch reporting and verification. Several delegations stressed the need for adequate control systems within regional fisheries management organizations. Greater coordination among regional organizations was called for, in particular to ensure the establishment of compatible monitoring, control and surveillance and compliance and enforcement measures such as vessel registers, centralized regional vessel monitoring systems and harmonization of sanctions and penalties. The establishment of a regional observer programme was also highlighted.

Several delegations recommended better collaborative actions to address trans-shipment, including through regional fisheries management organizations. Several other delegations called for a ban on trans-shipment at sea and stricter controls in ports.

112. A number of delegations described projects of international cooperation such as the voluntary monitoring, control and surveillance network, the strengthening and development of which was proposed, and the pilot project for monitoring, control and surveillance implemented through the Indian Ocean Commission. It was recognized that information on vessels believed to have engaged in illegal, unreported and unregulated fishing remained scattered. One delegation highlighted the benefits of joint inspection and the need to collect and share critical information in order to combat illegal, unreported and unregulated fishing, including through the development of a global database of information on reliability and fishing history of specific vessels. Another delegation proposed developing a global register of fishing vessels, including refrigerated transport and supply vessels, that would incorporate all information on beneficial ownership. Other suggestions included the establishment of a registry of vessels that would meet minimum standards for fishing on the high seas as well as a blacklist of vessels and their flags to avoid reflagging. The observer from one regional fisheries management organization reported on cooperative action with other regional organizations for the purpose of data collection and information exchange regarding illegal, unreported and unregulated fishing.

113. A number of delegations indicated that the costly nature of monitoring, control and surveillance operations required providing assistance to developing States and promoting international cooperation among all States concerned in the form of, inter alia, capacity-building, physical surveillance and the use of remote sensing. Several small island State delegations underlined the challenges that they faced in the implementation of effective monitoring, control and surveillance, given the proportionately large maritime areas under their jurisdiction and their geographic characteristics. That situation required the adoption of unique approaches to monitoring, control and surveillance which drew on region-wide resources in a coordinated and integrated manner through a regional strategy.

4. Consideration of elements relating to developing States and non-parties

114. The President invited statements on issues relating to developing States and non-parties as outlined in the document containing elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). He invited further discussion on impediments to ratifications/accessions to the Agreement. He stressed the role of assistance to developing States in helping to fulfil the Agreement and encouraging further participation in the Agreement and adherence by non-parties. He noted that increased participation in the Agreement, including that of developing States, would benefit all States.

(a) Recognition of special requirements, provision of assistance and capacity-building

115. A number of delegations indicated that for many developing States, in particular small island developing States, fishing was central to economic survival, but in the absence of the capacity to derive full benefits from it, the exploitation of

resources was often carried out by foreign fishing fleets. The social component of fishing activities was also highlighted.

116. Many delegations recognized that human resources and financial constraints in developing States continued to be a major impediment to the effective implementation of the Agreement. Several delegations emphasized that the costs incurred and the know-how required for the implementation of the Agreement, especially in connection with developing national legislation, infrastructure, surveillance and monitoring mechanisms, training of personnel and strengthening of port controls, constituted an obstacle for developing States wishing to become parties and needed to be addressed through the provision of assistance. Several delegations stated that targeted delivery of assistance and capacity-building to developing States was critical to cooperative management. Other delegations indicated that assistance to developing States should focus more on the development of national policies for fisheries than on the provision of funds. It was underlined that lack of capacity, which prevented developing States from becoming parties to the agreement and members of relevant regional fisheries management organizations, could lead fishing vessels to register in those countries in order to circumvent the conservation and management measures adopted pursuant to the Agreement. One delegation suggested that information on the Agreement should be further circulated among developing States, for example on the occasion of the session of the FAO Committee on Fisheries.

117. A number of delegations outlined their bilateral assistance to developing countries for the conservation and management of fishery resources. One delegation called for a clearer definition of areas of support, particularly in relation to the recognition of the special needs of those countries to develop fisheries for food security at the community level. Developed States were invited to develop coherent strategies for the provision of assistance, and policy coherence was called for at the international level, among donors and developing States. It was noted that an opportunity for developing States to indicate their needs could be provided by future meetings of the Open-Ended Informal Consultative Process on Oceans and the Law of the Sea.

118. The importance of Part VII of the Agreement for capacity-building and human resources development in developing States was underlined by many delegations, who also indicated that its provisions and the assistance fund established by the General Assembly under Part VII, should be widely publicized. It was also stressed that further contributions should be made to the Fund. One delegation stated that there should be greater coordination and consultation between and among donors and developing States so as to rationalize the allocation of aid and avoid overlap. One delegation encouraged developing States to avail themselves of the Part VII assistance fund, especially for improved data collection. It was noted that Part VII of the Agreement should not be interpreted narrowly to apply only to assistance in implementing the Agreement, but should also apply to assistance for developing States' participation in high-seas fisheries in general. It was noted that assistance through regional organizations such as CCAMLR and WCPFC, through financial institutions such as the Global Environment Facility, or through bilateral programmes could also prove very successful.

119. A number of delegations stated that market access for developing States should be addressed. In particular, one delegation called for the abolition of policies,

including those related to subsidies, that are detrimental to developing States' access to markets. Several delegations stressed the need to adjust stock allocations to fully integrate the participation of developing States. In that regard, a number of observers called for the full application of article 11 of the Agreement (New members or participants).

120. Several delegations stressed the need to help developing States to develop their fishing capacity. One observer proposed that artisanal and small-scale fisheries be granted preferential access to fish stocks, noting that such preferential treatment would be consistent with Millennium Development Goals 1 (Eradicate extreme poverty and hunger) and 7 (Ensure environmental sustainability).

121. A number of observers from regional fisheries management organizations outlined the assistance that they provided to developing States in the field of data collection. One of them indicated that it was also providing assistance to coastal developing countries in mitigating the effect of artisanal longline fleets on marine turtle populations, through awareness-raising of fishing communities and training of local observers and programme managers. It was stressed that those examples demonstrated that regional fisheries management organizations often have the necessary skills and contacts to assist with capacity-building.

122. One observer emphasized the need to build the capacity of developing States to implement flag State, port State and national control measures, with a view to addressing IUU fishing. The observer also stated that participation in regional fisheries management organizations should not depend on past fishing in order to ensure that developing States did not engage in unsustainable fishing to build a track record. Another observer urged the development of cooperative programmes for fisheries-related data collection, exchange and management, scientific research, use of appropriate fishing gear and techniques and adoption of fisheries compliance and enforcement measures.

(b) Increasing adherence to the Agreement

123. Many delegations stressed that wider participation in the Agreement was fundamental to ensuring the effectiveness of its regime, and welcomed the announcement by a number of delegations that they would shortly ratify the Agreement, pending the completion of domestic procedures.[5]

124. One delegation stated that meetings such as the Review Conference served to raise awareness among non-parties of the importance of accession to the Agreement, thus fostering wider ratification. Attention was also drawn to the fact that implementation of the Agreement could be strengthened through enhanced regional cooperation.

125. Several non-parties suggested that one of the objectives of the Review Conference was to facilitate universal ratification of the Agreement, which would make for the most effective implementation. There were operative as well as substantive barriers to adherence, including the provisions of the Agreement related

[5] States which indicated their intention to become parties to the Agreement both at the fifth round of informal consultations of States parties to the Agreement and at the Review Conference included: Indonesia, Japan, Morocco, Mozambique, Palau, the Philippines and Sierra Leone. Austria, on behalf of the European Union, indicated that European Union member States that were not yet parties to the Agreement would become parties in the near future.

to the compatibility of conservation and management measures (article 7) and boarding and inspection (articles 21 and 22), as well as issues related to the rights and duties of port States and to allocation of resources. These delegations stressed that the Agreement should be interpreted and applied in a manner consistent with article 4 of the Convention. In relation to the issue of compatibility of conservation and management measures, they emphasized that the Agreement did not satisfactorily address the relationship between the norms adopted by the coastal State in areas under its jurisdiction and those adopted by flag States with regard to the high seas, and called for reiterating the pre-eminence of the rights, duties and interests of coastal States, in conformity with section 2 of Part VII of the Convention. Regarding non-flag State enforcement, which was considered very costly and difficult to carry out due to the vastness of the areas that needed to be monitored, it was noted that boarding could be dangerous to the safety of the crews and vessels. The risks that intrusive inspections might pose to legal fishing activities were underlined, as well as the need for due process to ensure the protection of the human rights of the captain and crew of fishing vessels and the prompt release of vessels in case of innocence. Effective alternative measures to boarding and inspection were suggested, such as vessel registers, vessel monitoring systems, trade documentation, certification schemes, permanent independent on-board observers and joint inspections. One delegation suggested that guidelines should be adopted for joint inspections.

126. A proposal was made by several non-parties to initiate a process of informal consultations to address the obstacles. The consultations could be used to consider alternative mechanisms to boarding and inspection and the possibility of negotiating a technical annex to the Agreement on compensation for damages and economic losses incurred by boarding and inspection conducted contrary to international law. Another delegation proposed that the Review Conference adopt a recommendation on articles 21 and 22 of the Agreement, which would endorse the application of the mechanism provided for under the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in the context of the Agreement.

127. In spite of the obstacles, non-parties stressed that they had continued their efforts for the conservation and management of fishery resources in accordance with the principles of the Agreement, including within regional fisheries management organizations.

128. Several States parties emphasized that the Agreement already represented a carefully achieved balance of the interests of coastal States and those of flag States. Non-parties had accepted that when the text of the Agreement was adopted in 1995, and it would not be appropriate to reopen a debate on the provisions of the Agreement. Non-parties should consider joining the Agreement and continuing the debate on issues of concern with other States parties. Issues relating to inspection and control mechanisms, in particular, could be addressed in the context of regional fisheries management organizations in order to find regional solutions acceptable to all members, on the basis of the flexible approach provided for in the Agreement. The dispute settlement mechanisms envisaged under the Agreement would provide an opportunity to address issues for which no settlement had been reached among parties.

5. Further reviews

129. Most delegations stressed the need to continue the review of the effectiveness of the Agreement. However there was a divergence of views on the frequency and format of such reviews. A number of delegations expressed support for informal meetings every two years, with every third meeting being held in a more formal setting. One delegation favoured a review by the informal meetings every six to eight years, noting that formal conferences diverted resources from implementation. Several delegations proposed a periodic five-year review of the Agreement in the context of formal meetings of States parties, while others expressed preference for a four-year review cycle. One observer suggested annual informal meetings and review conferences every four years, with consideration being given to meetings of two weeks' duration as participation in the Agreement increased.

IV. Adoption of the final report of the Review Conference

130. At the last plenary meeting, the President proposed that the Review Conference adopt the five documents before it, containing draft elements negotiated by the Drafting Committee for adoption by the Conference. These documents would be incorporated into what would become the final report of the Review Conference, which would include the adopted outcome of the Conference and a draft record of deliberations prepared by the President with the assistance of the Secretariat. The report would be made available on the Division's website for three weeks to allow participants to provide suggestions and comments, including on the characterization of discussions. The President, in cooperation with the Bureau, would then review all suggestions and comments made by participants and decide which of those would be incorporated in the record of deliberations.

131. One delegation proposed an amendment to the document containing elements related to developing States and non-parties in order to reflect the text agreed by the Drafting Committee. In view of the limited time available to review the draft elements, another delegation proposed that the President and the Secretariat be entrusted with the responsibility of making any technical changes necessary, should the draft elements not properly reflect what had been agreed by the Drafting Committee.

132. The Conference adopted the five documents, as amended, with the understanding that the President, with the assistance of the Secretariat, would combine them into a single document and make any necessary technical changes.

V. Other matters

133. No delegation made any statement under this agenda item.

VI. Suspension of the Review Conference

134. The President proposed changing agenda item 13 from "Closure of the Conference" to "Suspension of the Conference", following agreement on the resumption of the Conference at a date no later than 2011. The Conference approved the suggestion by the President.

135. In his final address to the Review Conference, the President highlighted a difference between the debates that had taken place during the negotiations of the Agreement and those that had taken place during the Review Conference. The negotiations of the Agreement had devoted considerable attention to the rights and duties of different groups of States, including flag States, coastal States and port States. While those issues were still present and sensitive, a much greater proportion of time, during the Review Conference, had been spent on finding ways to give full effect to the Agreement. The President highlighted the substantive review and assessment as well as the significant number of recommendations for strengthening the implementation of the Agreement contained in the elements adopted by the Conference, and expressed satisfaction with the decision to keep the Agreement under review. The President noted that the Review Conference had called attention to the value of the Agreement and also to the fact that more remained to be done.

136. The representative of Austria, on behalf of the European Union, stated that the Conference had adopted a report that covered a wide range of issues, and had succeeded in reviewing the effectiveness of the Agreement. He noted that the Conference had shown the necessity of a continuation of the review process and stressed that, as seen in the final report, States parties had seriously considered the concerns of non-parties in order to pave the way for their adherence to the Agreement. The representative of Ecuador congratulated all delegations for their hard work.

137. The President declared the Conference suspended.

Annex

Outcome of the Review Conference

New York, 26 May 2006

Preamble

1. The Review Conference affirmed that the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement provide the legal framework for conservation and management of straddling fish stocks and highly migratory fish stocks.

2. The Review Conference recalled that all provisions of the Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. Regional fisheries management organizations and arrangements were recognized as the primary mechanism for international cooperation in conserving and managing straddling fish stocks and highly migratory fish stocks. Many regional fisheries management organizations have incorporated provisions of the United Nations Fish Stocks Agreement in their constitutive agreements, or have adopted measures in practice to implement the Agreement. The Conference encouraged States, as appropriate, to recognize that the general principles of the Agreement should also apply to discrete fish stocks in the high seas.

3. The Review Conference acknowledged that the sustainable use of fish stocks is a significant source of food and livelihoods for large parts of the world's population. At the same time, the Conference expressed concern over the significant adverse impacts that overfishing has had on the state of fish stocks and the ecological integrity of the world's oceans. Accordingly, the Conference agreed that there is a compelling need for all States and regional fisheries management organizations to ensure the conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

I. Conservation and management of stocks

A. Review and assessment

4. The Review Conference reviewed current efforts related to the conservation and management of straddling fish stocks and highly migratory fish stocks, including the adoption of measures to ensure the long-term sustainability of such stocks and to address overfishing, overcapacity and the effects of fishing on the marine environment; cooperation to manage fisheries not regulated by a regional fisheries management organization; and the collection and sharing of data. Based on this review, the Conference made the following assessments.

5. The adoption and implementation of measures by a regional fisheries management organization for the long-term sustainability of straddling fish stocks and highly migratory fish stocks as well as efforts by States to address fisheries not regulated by a regional fisheries management organization are proceeding unevenly.

6. The Food and Agriculture Organization of the United Nations (FAO) has indicated that about 30 per cent of the stocks of highly migratory tuna and tuna-like species, more than 50 per cent of the highly migratory oceanic sharks and nearly two thirds of the straddling fish stocks and the stocks of other high-seas fishery resources are overexploited or depleted.

7. Several regional fisheries management organizations have improved the level of sophistication and effectiveness of the conservation and management measures adopted, including rebuilding plans for straddling fish stocks and highly migratory fish stocks. Nonetheless a number of challenges remain in achieving full implementation of the United Nations Fish Stocks Agreement so as to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks, particularly with respect to the application of the precautionary approach and ecosystem approaches to fisheries management.

8. States, both individually and through regional fisheries management organizations, have begun to apply the precautionary approach to fisheries management. While the application of the precautionary approach is widely accepted, the extent to which the precautionary approach is being implemented in practice varies widely.

9. Since the entry into force of the United Nations Fish Stocks Agreement, two new regional fisheries management organizations have been established (the Western and Central Pacific Fisheries Commission (WCPFC) and the South East Atlantic Fisheries Organization (SEAFO) while another regional fisheries management organization, the Inter-American Tropical Tuna Commission, has revised its convention to reflect and incorporate the provisions of the Agreement. Further, two regional fisheries management organizations are undertaking comprehensive reviews with respect to the provisions of the Agreement (the North East Atlantic Fisheries Commission and the Northwest Atlantic Fisheries Organization). However, additional work is needed to advance the implementation of the Agreement through regional fisheries management organizations.

10. A number of significant international fisheries remain outside the purview of a regional fisheries management organization. However, efforts to establish one regional arrangement, the Southern Indian Ocean Fisheries Arrangement, are nearing completion. And still other efforts are under way to develop new regional fisheries management organizations or arrangements (e.g., in the South Pacific region and in the North Pacific for non-highly migratory fish stocks).

11. Overcapacity and overfishing continue to undermine efforts to achieve the long-term sustainability of many straddling fish stocks and highly migratory fish stocks. While there has been some progress in addressing overcapacity at the national and regional levels, the current level of fishing capacity in many fisheries is still too high. Implementation of the FAO International Plan of Action for the Management of Fishing Capacity, for which a target date of 2005 was agreed to in the Plan of Implementation of the World Summit on Sustainable Development, is far from complete. Some subsidies continue to contribute to overcapacity and overfishing.

12. While many regional fisheries management organizations have adopted measures to minimize the catch of non-target and associated and dependent species,

the scope and effectiveness of these measures could be improved, particularly with respect to the species covered, compliance and data reporting.

13. Regional efforts to implement an ecosystem approach to fisheries management, beyond addressing non-target and associated and dependent species, have increased in recent years with a number of regional fisheries management organizations undertaking information and data gathering initiatives to assess the need for and scope of additional management measures or other initiatives. However, accelerated progress in this area is needed.

14. Data collection and sharing are a basic obligation of States and fundamental to the effectiveness of regional fisheries management organizations, yet ensuring timely and accurate data reporting, including reporting of catches, remains a serious challenge. Without comprehensive and accurate data gathering and reporting, both scientific and management processes are undermined.

15. Closed areas, marine protected areas and marine reserves can be effective tools for the conservation and management of some fish stocks and habitats of special concern. Some regional fisheries management organizations have utilized closed areas both to manage fisheries and to protect habitats and biodiversity.

16. Regional fisheries management organizations with competence to regulate straddling fish stocks have the necessary competence to conserve and manage high-seas discrete stocks. There is no obstacle for such regional fisheries management organizations to adopt management measures in respect of these stocks in accordance with the general principles set forth in the Agreement.

17. Although in accordance with the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement there is an obligation for coastal States and States fishing on the high seas to cooperate in the conservation and management of straddling fish stocks and highly migratory fish stocks, the provisions of the Agreement with respect to compatibility have not been fully applied in some areas of the oceans for some fisheries.

B. Proposed means of strengthening

18. As a result of the review and assessment, the Review Conference recommended that **States individually and collectively through regional fisheries management organizations**:

(a) Strengthen their commitment to adopt and fully implement conservation and management measures for straddling fish stocks and highly migratory fish stocks, including stocks that are currently unregulated, in accordance with the best available scientific information on the status of such stocks and the provisions of the Agreement with respect to the precautionary approach;

(b) Take measures to improve cooperation between flag States whose vessels fish on the high seas and coastal States so as to ensure the achievement of compatibility of measures for the high seas and for those areas under national jurisdiction with respect to straddling fish stocks and highly migratory fish stocks in accordance with article 7 of the Agreement;

(c) Where needed, establish new regional fisheries management organizations or arrangements for the conservation and management of straddling

fish stocks, highly migratory fish stocks and high-seas discrete stocks and agree on interim measures until such arrangements are established;

(d) Enhance understanding of ecosystem approaches and commit themselves to incorporating ecosystem considerations in fisheries management, including actions to conserve associated and dependent species and to protect habitats of specific concern, taking into account existing FAO guidelines, and request FAO to continue its work on the subject, as appropriate;

(e) Develop management tools, including closed areas, marine protected areas and marine reserves and criteria for their implementation, to effectively conserve and manage straddling fish stocks, highly migratory fish stocks and high-seas discrete stocks and protect habitats, marine biodiversity and vulnerable marine ecosystems, on a case-by-case basis in accordance with the best available scientific information, the precautionary approach and international law;

(f) Commit themselves to urgently reducing the capacity of the world's fishing fleets to levels commensurate with the sustainability of fish stocks, through the establishment of target levels and plans or other appropriate mechanisms for ongoing capacity assessment, while avoiding the transfer of fishing capacity to other fisheries or areas, in a manner that undermines the sustainability of fish stocks, including, inter alia, those areas where fish stocks are overexploited or in a depleted condition, and recognizing in this context the legitimate rights of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks consistent with article 25 of the Agreement, article 5 of the Code of Conduct, and paragraph 10 of the International Plan of Action for the Management of Fishing Capacity;

(g) Eliminate subsidies that contribute to illegal, unregulated and unreported fishing, overfishing and overcapacity, while completing the efforts undertaken through the World Trade Organization in accordance with the Doha Declaration to clarify and improve its disciplines on fisheries subsidies;

(h) Enhance efforts to address and mitigate the incidence and impacts of all kinds of lost or abandoned gear (so-called ghost fishing), establish mechanisms for the regular retrieval of derelict gear and adopt mechanisms to monitor and reduce discards;

(i) Provide required catch and effort data, and fishery-related information, in a complete, accurate and timely way and to develop, where they do not exist, processes to strengthen data collection and reporting by members of regional fisheries management organizations, including through regular audits of member compliance with such obligations, and when such obligations are not met, require the member concerned to rectify the problem, including through the preparation of plans of action with timelines;

(j) Cooperate with FAO in the implementation and further development of the Fisheries Resources Monitoring System initiative;

(k) Commit themselves to submitting, on a priority basis, information on deep-sea fish catches, as requested by the twenty-sixth session of the FAO Committee on Fisheries, and contribute to the work of FAO to collect and collate information concerning past and present deep-water fishing activities and to

undertake an inventory of deep-water stocks and an assessment of the effects of fishing on deep-water fish populations and their ecosystems.

19. The Review Conference recommended that **FAO** should (a) establish arrangements for the collection and dissemination of data in accordance with article 7 of annex I to the Agreement, where none exist; and (b) revise its global fisheries statistics database to provide information for the stocks to which the Agreement applies and for high-seas discrete stocks on the basis of where the catch was taken.

20. The Review Conference recommended that **States that are FAO members** provide the organization with appropriate means to advance the above requests and objectives.

II. Mechanisms for international cooperation and non-members

21. The Review Conference underscored that international cooperation by all those fishing for straddling fish stocks and highly migratory fish stocks is necessary for the effective and long-term conservation and management of such stocks. The Convention and the Agreement provide the framework for such international cooperation by States directly or through regional fisheries management organizations and arrangements. Cooperation is also required to modernize and strengthen regional fisheries management organizations to ensure robust and systematic approaches in international fisheries governance.

A. Review and assessment

22. The Review Conference reviewed the current mechanisms for international cooperation for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as efforts to address fishing activity by vessels of non-members of regional fisheries management organizations. Based on this review, the Review Conference made the following assessments.

23. In recent years, a significant number of States whose vessels fish for stocks regulated by regional fisheries management organizations have become members of those organizations. Enabling all States with a real interest in the fisheries concerned to become members of regional fisheries management organizations is essential to their effectiveness. Enhanced capacity-building for developing States is critical in this regard.

24. A number of regional fisheries management organizations have created formal arrangements to promote non-member adherence to adopted conservation and management measures, including data collection and monitoring, control and surveillance measures. Such "cooperating non-member/party" status is often undertaken as an interim step leading to full membership, where this is possible.

25. However, problems of non-compliance by members and cooperating members and fishing by non-members continue to undermine the effectiveness of adopted conservation and management measures within regional convention areas.

26. Regional fisheries management organizations are making progress in addressing illegal, unregulated and unreported fishing activities that undermine the

integrity of their conservation and management measures through the adoption of, inter alia, increased monitoring, control and surveillance, positive and negative vessel lists, trade or market-related measures, catch and trade documentation schemes, port measures, vessel monitoring systems and regulations for trans-shipment. However, some regional organizations are more advanced than others and the implementation of such measures, particularly across organizations and oceans, needs to be strengthened and coordinated.

27. Reflagging activities that are undertaken to contravene the Agreement and circumvent regional organizations' conservation and management measures continue. In addition, fish caught in contravention of applicable conservation and management measures continue to enter markets.

28. While several regional fisheries management organizations have made good progress in modernizing their mandates to implement the United Nations Fish Stocks Agreement, a number of organizations are not fulfilling fully in a number of areas the range of functions outlined in articles 10, 11 and 12 of the Agreement.

29. Some regional fisheries management organizations have begun processes to systematically review and assess their performance in implementing relevant provisions of the United Nations Fish Stocks Agreement and other relevant instruments. Such processes should be initiated in all other regional fisheries management organizations.

30. While some regional fisheries management organizations have undertaken efforts to address participatory rights and allocation issues, including accommodating the interests of new members and the interests of developing States to participate in high-seas fisheries for straddling fish stocks and highly migratory fish stocks, further work is needed, bearing in mind the importance of addressing social and economic interests in a manner consistent with conservation objectives.

31. An initiative is under way, aimed at developing the standards of regional fisheries management organizations that may help to promote improved governance by sharing information on best practices.

B. Proposed means of strengthening

32. As a result of the review and assessment, the Review Conference agreed to recommend that **States individually and collectively through regional fisheries management organizations**:

(a) Continue on an urgent basis to strengthen the mandates of, and measures adopted by, regional fisheries management organizations to implement modern approaches to fisheries management as reflected in the Agreement and other relevant international instruments, including relying on the best scientific information available and application of the precautionary approach, and incorporating an ecosystem approach into fisheries management;

(b) Strengthen and enhance cooperation among existing and developing regional organizations, including increased communication and further coordination of measures, and, following the example of regional organizations that regulate highly migratory fish stocks and the regional tuna meeting that will be hosted by Japan in 2007, agree to hold consultations of States members of regional fisheries

management organizations that regulate straddling fish stocks to exchange views on key issues;

(c) Address participatory rights through, inter alia, the development of transparent criteria for allocating fishing opportunities, taking due account, inter alia, of the status of the relevant stocks and the interests of all those with a real interest in the fishery;

(d) Recalling that only those States which are members of regional fisheries management organizations, or which agree to apply the conservation and management measures established by them, shall have access to the fishery resources to which those measures apply, establish mechanisms to promote the participation of non-members fishing in the area of competence of a regional organization to either join the organization or agree to apply the conservation and management measures established by it;

(e) Commit themselves to providing incentives, where needed, to encourage non-members to join the regional fisheries management organizations, including sharing technology and expertise, assistance in the development of appropriate frameworks, and enhancement of enforcement capabilities. Non-members shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks;

(f) Ensure that post opt-out behaviour is constrained by rules to prevent opting-out parties from undermining conservation, clear processes for dispute resolution, and a description of alternative measures that will be implemented in the interim;

(g) Improve the transparency of regional fisheries management organizations, both in terms of decision-making that incorporates the precautionary approach and the best scientific information available and by providing reasonable participation for intergovernmental and non-governmental organizations through the organizations' rules and procedures;

(h) Cooperate to examine and clarify the role of the "genuine link" in relation to the duty of flag States to exercise effective control over fishing vessels flying their flag;

(i) Take concrete measures to enhance the ability of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks, including facilitating access to such fisheries, consistent with article 25 of the Agreement;

(j) Urge those regional fisheries management organizations of which they are members to undergo performance reviews on an urgent basis, whether initiated by the organizations themselves or with external partners; encourage the inclusion of some element of independent evaluation in such reviews; and ensure that the results are made publicly available. The reviews should use transparent criteria based on the Agreement and other relevant instruments, including best practices of regional fisheries management organizations;

(k) Cooperate to develop best practice guidelines for regional fisheries management organizations and apply, to the extent possible, those guidelines to organizations in which they participate.

III. Monitoring, control and surveillance and compliance and enforcement

33. Effective compliance with and enforcement of agreed conservation and management measures, supported by effective monitoring, control and surveillance, is critical to achieving the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

A. Review and assessment

34. The Review Conference reviewed the current efforts related to monitoring, control and surveillance and compliance and enforcement. Based on this review, the Conference made the following assessments.

35. There have been notable improvements in the area of monitoring, control and surveillance and compliance and enforcement, with many States individually and collectively, through regional fisheries management organizations, developing or adopting measures relating to, inter alia, licensing and authorization of vessels, positive and negative lists of vessels, high-seas boarding and inspection, alternative mechanisms, observer programmes, trade tracking or catch documentation schemes, vessel monitoring systems, registers of fishing vessels, and trans-shipment. Certain regional fisheries management organizations will need further work to adopt a comprehensive monitoring, control and surveillance scheme. In the absence of such schemes, regional fisheries management organizations cannot fully provide an appropriate framework for compliance with their conservation and management measures. In addition, significant levels of illegal, unregulated and unreported fishing continue to occur in many fisheries for straddling fish stocks and highly migratory fish stocks. Further steps to combat and deter illegal, unregulated and unreported activities are needed.

36. Effective control by flag States over fishing vessels flying their flag is critical to conserving and managing straddling fish stocks and highly migratory fish stocks and preserving the integrity of regional regimes.

37. Those engaged in illegal, unregulated and unreported fishing activities have been able to exploit differences or deficiencies among the monitoring, control and surveillance measures adopted by States and regional fisheries management organizations to escape detection or to avoid compliance.

38. While there has been progress in some areas regarding investigation and sanctions for violations, more effort is needed, particularly with respect to expeditious investigation of suspected violations and follow-up actions. Also, despite the standard set by article 19 of the Agreement, the sanctions imposed by some flag States against their vessels in cases of demonstrated violations are not severe enough to deter future violations.

39. States must ensure compliance of their nationals and vessels flying their flag with measures adopted by regional fisheries management organizations if those organizations are to effectively discharge their mandates and manage straddling fish stocks and highly migratory fish stocks. To do so, States often need the cooperation and assistance of other States, including flag States and port States, to obtain the necessary information or evidence.

40. A number of port States and regional fisheries management organizations have developed measures or schemes to prevent the landing and trans-shipment of illegally caught fish in order to promote compliance with regional organizations' conservation and management measures. However, there is still much to be done in developing such measures or schemes. In particular, a more coordinated approach among States and regional organizations is required.

41. Mechanisms for international cooperation to ensure compliance with conservation and management measures have been established in a number of regions, in accordance with the Agreement, and at the global level regarding the exchange of monitoring, control and surveillance information.

42. In respect of concerns raised about boarding and inspection, it was noted that provision is made in article 21, paragraph 15, of the Agreement, for alternative mechanisms in regional fisheries management organizations. Some participants indicated that consideration of such alternative mechanisms could include, inter alia, on-board observer programmes, utilization of VMS, fish tracking and verification systems, fleet performance review instruments and catch documentation schemes.

B. Proposed means of strengthening

43. As a result of the review and assessment, the Review Conference recommended that **States individually and collectively through regional fisheries management organizations**:

(a) Strengthen effective control over vessels flying their flag and ensure that such vessels comply with, and do not undermine, conservation and management measures adopted by regional fisheries management organizations;

(b) Adopt, strengthen and implement compliance and enforcement schemes in all regional fisheries management organizations; enhance or develop mechanisms to coordinate monitoring, control and surveillance measures, including those directed at non-members, between regional fisheries management organizations and with relevant market States; and ensure the fullest possible exchange of monitoring, control and surveillance information related to illegal, unregulated and unreported fishing activities. Global information exchange efforts should be enhanced;

(c) Adopt stringent measures to regulate trans-shipment, in particular at-sea trans-shipment; and in parallel, encourage and support FAO in studying the current practices of trans-shipment as it relates to fishing operations for straddling fish stocks and highly migratory fish stocks and produce a set of guidelines for this purpose;

(d) Adopt all necessary port State measures, consistent with article 23 of the Agreement, particularly those envisioned in the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, and promote minimum standards at the regional level; and in parallel, initiate, as soon as possible, a process within FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;

(e) Join and actively participate in the International Monitoring, Control and Surveillance Network for Fisheries-related Activities, where they have not already done so, and support the enhancement of the Network;

(f) Strengthen fisheries access agreements to include assistance for monitoring, control and surveillance and compliance and enforcement within the areas under the national jurisdiction of the coastal State providing fisheries access;

(g) Develop appropriate processes to assess flag States' performance with respect to implementing the obligations regarding fishing vessels flying their flag set out in the Agreement and other relevant international instruments; and consider the use of multilaterally agreed trade measures, consistent with the rules established by the World Trade Organization, to promote implementation of those obligations by flag States;

(h) Develop regional guidelines for fisheries sanctions to be applied by flag States so that flag States may evaluate their systems of sanctions to ensure that they are effective in securing compliance and deterring violations;

(i) Take necessary measures, consistent with international law, to ensure that only fish that have been taken in accordance with applicable conservation and management measures reach their markets, and take steps consistent with national and international law to require those involved in fish trade to cooperate fully to this end, at the same time, recognize the importance of market access, in accordance with provisions 11.2.4, 11.2.5 and 11.2.6 of the Code of Conduct for Responsible Fisheries, for fishery products and fish caught in a manner that is in conformity with the applicable conservation and management measures;

(j) Strengthen, consistent with national law, domestic mechanisms to deter nationals and beneficial owners from engaging in illegal, unregulated and unreported fishing activities and facilitate mutual assistance to ensure that such actions can be investigated and proper sanctions imposed;

(k) Promote universal acceptance of the FAO Compliance Agreement;

(l) Cooperate with FAO to develop a comprehensive global register of fishing vessels, including refrigerated transport and supply vessels, that incorporates all available information on beneficial ownership, subject to confidentiality requirements in accordance with national law;

(m) Develop measures to prohibit supply and refuelling vessels flying their flag from engaging in operations with vessels listed as engaging in illegal, unregulated or unreported fishing;

(n) Ensure that all vessels fishing on the high seas carry vessel monitoring systems as soon as practicable;

(o) Recognize that the development within regional fisheries management organizations of alternative mechanisms for compliance and enforcement in accordance with article 21, paragraph 15, of the Agreement, including other elements of a comprehensive monitoring, control and surveillance regime that effectively ensures compliance with the conservation and management measures adopted by the regional fisheries management organization, could facilitate accession to the Agreement by some States.

IV. Developing States and non-parties

44. The Conference affirmed that increasing adherence to the Agreement is vital to promoting full implementation of the Agreement and achieving its objective. The Conference further recognized the need to provide assistance to developing States in areas such as data collection, scientific research, monitoring, control and surveillance, human resource development and information sharing, as well as technical training and assistance as it relates to conservation and management of straddling fish stocks and highly migratory fish stocks and participation in such fisheries.

A. Review and assessment

45. The Review Conference reviewed the current efforts to implement Part VII of the Agreement relating to the requirements of developing States. The Conference also considered issues related to ratification and accession to the Agreement, including ways to encourage more States to become parties. Based on this review, the Review Conference made the following assessments.

46. Enhancing assistance to developing States parties is necessary to enable such States to implement the Agreement to the fullest extent possible.

47. Some useful steps have been taken to assist developing States parties in implementation. The States parties to the Agreement established an assistance fund pursuant to Part VII of the Agreement, administered by FAO, to provide those States parties, especially small island developing States parties, with financial assistance to help them in implementing the Agreement. The fund currently has $417,700 available, on the basis of the contributions of Canada, Iceland, Norway and the United States of America. Canada has pledged to increase its total contributions to the Part VII fund to Can$ 500,000.

48. Other vehicles also exist to assist developing States in the management of fisheries for straddling fish stocks and highly migratory fish stocks, including funds and other programmes established by regional fisheries management organizations, international financial institutions, and FAO, and bilateral programmes. For example, WCPFC has established a special requirements fund for developing State members. The Commission for the Conservation of Antarctic Marine Living Resources has agreed to develop a programme for contracting parties to provide support and technical assistance as well as advice and training to non-contracting parties. The SEAFO Convention has also established mechanisms to provide not only financial assistance to developing countries, but also technical assistance, information exchange to better facilitate conservation and management of stocks, and assistance with scientific research and monitoring, control and surveillance. The Commission for the Conservation of Southern Bluefin Tuna will cover travelling expenses for developing countries that would like to be observers at its meetings. The International Commission for the Conservation of Atlantic Tuna (ICCAT) also has mechanisms to assist developing States that are members and the Madrid Protocol to the ICCAT Convention has entered into force, reducing the costs of membership for developing States.

49. Further assistance is critically needed to build the capacity of developing States, particularly in the areas of (a) stock assessment and scientific research;

(b) data collection and reporting; (c) monitoring, control and surveillance; (d) port State control; (e) compliance with market and trade-related measures and meeting market access requirements, including with respect to health and quality standards; (f) development of fisheries for straddling fish stocks and highly migratory fish stocks; (g) human resource development; and (h) information sharing.

50. Developing States also require assistance in facilitating their participation in regional fisheries management organizations, including through facilitating access to fisheries for straddling fish stocks and highly migratory fish stocks, in accordance with article 25, paragraph 1(b), of the Agreement, as well as ensuring that such access benefits the States concerned and their nationals.

51. The number of States parties to the Agreement has been growing steadily and 14 States have indicated their intention to become parties to the Agreement in the near future.

52. Several non-parties to the Agreement identify impediments to the possibility of their becoming parties to the Agreement. Those impediments include lack of capacity and resources to implement the Agreement as well as concerns over the possible interpretation and implementation of several provisions of the Agreement, specifically articles 4, 7, 21, 22 and 23.

53. Many non-parties, along with States parties to the Agreement, cooperate as members of regional fisheries management organizations and implement conservation and management measures at the national level, contributing to the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

54. However, while there has been an increase in the number of parties to the Agreement, more efforts are needed to increase adherence in order to reach the goal of universal participation.

B. Proposed means of strengthening

55. As a result of the review and assessment, the Review Conference agreed to recommend that **States**:

(a) Urgently contribute, where they have not yet done so, to the Part VII fund or to other mechanisms to assist developing States in the conservation and management of straddling fish stocks and highly migratory fish stocks. Such assistance should be targeted to such areas as (i) stock assessment and scientific research; (ii) data collection and reporting; (iii) monitoring, control, and surveillance; (iv) port State control; (v) compliance with market and trade-related measures and meeting market access requirements, including with respect to health and quality standards; (vi) development of fisheries for straddling fish stocks and highly migratory fish stocks; (vii) human resource development; and (viii) the sharing of information, including vessel information;

(b) Enhance the participation of developing States in regional fisheries management organizations, including through facilitating access to fisheries for straddling fish stocks and highly migratory fish stocks, in accordance with article 25, paragraph 1(b), of the Agreement, taking into account the need to ensure that such access benefits the States concerned and their nationals;

(c) Cooperate with and assist developing States in designing and strengthening their domestic regulatory fisheries policies and those of regional fisheries management organizations in their regions;

(d) Promote coherence in the provision of such assistance and cooperation, both by individual Governments and through international mechanisms;

(e) Urge all States with an interest in fisheries for straddling fish stocks and highly migratory fish stocks that have not yet done so to become parties to the Agreement as soon as possible and disseminate information about the Agreement, including its objective and the rights and duties it provides;

(f) Exchange ideas on ways to promote further ratification and accession to the Agreement through a continuing dialogue to address concerns raised by some non-parties regarding, in particular, articles 4, 7, 21, 22, and 23 of the Agreement.

56. The Review Conference agreed to recommend that **FAO and the Division for Ocean Affairs and the Law of the Sea** should (a) further publicize the availability of assistance through the Part VII fund; and (b) solicit views from developing States parties regarding the application and award procedures of the Part VII fund, and consider changes where necessary to improve the process.

57. The Review Conference agreed to recommend that **States collectively through regional fisheries management organizations** establish a link to the Part VII fund homepage on their organization's website.

V. Dissemination of the final report and further reviews

58. The Review Conference agreed to request the President of the Review Conference to transmit the final report of the Conference to the secretariats of all regional fisheries management organizations, including, where possible, those under negotiation, and to the General Assembly, the International Maritime Organization, FAO and other relevant organizations, and to highlight relevant recommendations and requests for action contained in the report.

59. The Review Conference further agreed:

(a) That the Review Conference has provided a useful opportunity to assess the effectiveness of the Agreement and its implementation. Further review is also necessary;

(b) To continue the informal consultations of States parties and keep the Agreement under review through the resumption of the Review Conference at a date not later than 2011, to be agreed at a future round of informal consultations, and to request the Secretary-General to convene such meetings.